

FLYERSRIGHTS

October 21, 2026

Hon. Secretary Sean Duffy
United States Secretary of Transportation
Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590

**Request to Withdraw Direct Final Rule “Cause of Airline Delay and Cancellation
Categories Under Section 511(b) of the FAA Reauthorization Act of 2024”**

FlyersRights and the undersigned organizations respectfully request that the Department of Transportation withdraw the above-captioned direct final rule and clarify that Section 511(b) of the FAA Reauthorization Act of 2024 does not alter airlines’ independent legal obligations to passengers. The rule risks turning an airline self-reporting requirement into a means of airline self-exoneration contrary to the statute and the Administrative Procedure Act.

Section 511(b) addresses how airlines classify and report the causes of flight delays and cancellations. It does not establish that events excluded from a particular reporting category are categorically beyond an airline’s control, nor does it relieve airlines of otherwise applicable legal or contractual obligations to provide compensation, care, or other relief to passengers. By conflating statistical reporting classifications with substantive determinations of airline responsibility, the rule risks expanding a narrow congressional directive into a determination of passenger rights that Congress did not authorize.

Section 511(b) amends the categories of causes that air carriers report in their monthly submissions to the Bureau of Transportation Statistics under 14 C.F.R. § 234.4. These on-time performance reports serve important public and governmental purposes. They provide the public with information about airline reliability and enable the government to evaluate airline performance.

Critically, the reporting system relies on airlines to identify and classify the causes of their own delays and cancellations. An airline’s classification on BTS Form 234 is not, by itself, a legally dispositive determination of fault, responsibility, or obligations owed to passengers. An airline’s

substantive obligations to a passenger arise from treaties, statutes, regulations, and contracts of carriage, not simply from an airline's unilateral selection of a reporting code. Whether those obligations have been satisfied ultimately remains subject to judicial review.

The Department's rulemaking must preserve this distinction. A reporting exclusion does not, without additional legal authority, establish a substantive limitation of passenger rights. Nor can the Department use a direct final rule to resolve contested and discretionary policy questions while bypassing procedures ordinarily required for rulemaking.

1. Section 511(b) does not authorize the Department to convert a reporting exclusion into a substantive determination of airline responsibility or passenger rights.

Section 511(b) provides: "The following causes shall not be included within the Air Carrier Code specified in section 234.4 of title 14, Code of Federal Regulations, for cancelled and delayed flights." We do not dispute the Department's obligation to implement this directive by removing these ten causes from the Section 234.4(i)(1) category on BTS Form 234.

Congress did not declare that those events are necessarily outside an airline's control, establish that an airline bears no responsibility for a disruption involving such an event, or eliminate otherwise applicable obligations to assist or compensate affected passengers.

The categories of excluded events differ dramatically in their nature, frequency, foreseeability, preventability, and potential airline culpability. For example, Category 1 includes "[a]ircraft cleaning necessitated by the death of a passenger"; Category 7 addresses "[u]nscheduled maintenance...manifesting outside a scheduled maintenance program that cannot be deferred or must be addressed before flight"; and Category 8 addresses "[a]n emergency that required medical attention through no fault of the carrier." These events present materially different questions concerning causation, mitigation, responsibility, and obligation.

The express inclusion of Category 8's qualification "through no fault of the carrier" is particularly instructive. Congress knew how to specify the absence of carrier fault when describing a reporting cause. The qualification does not appear in the same form in every other listed cause. The text of Section 511(b) undermines an inference that every delineated event necessarily involves no airline fault or responsibility.

Cybersecurity incidents provide another illustration of the same problem. Excluding a cybersecurity event from a reporting category does not establish whether an airline contributed to it, failed to maintain reasonable safeguards, neglected available mitigation measures, or otherwise bears responsibility for resulting disruption.

Identifying the cause of a delay is not the same as determining responsibility for it. An event may initiate a disruption without explaining its duration, the carrier's contribution to it, the adequacy of the carrier's response and mitigation, or its independent legal obligations to affected passengers. A reporting code should not become a de facto safe harbor, particularly when the classification originates in the airline's own reporting.

Nor should the reporting exclusion determine passenger rights under the Montreal Convention, U.S. law, or contracts of carriage. The Montreal Convention has its own scope and liability framework. A BTS reporting classification cannot independently establish whether a claim falls within that framework or whether the treaty's requirements have been satisfied.

The Department should therefore expressly clarify that exclusion from the specified reporting category does not establish that an event was outside the airline's control, that the airline was without fault, or that the airline has satisfied its obligations to passengers. The Department should retract any statement suggesting **Section 511(b) does not independently authorize DOT to reduce passenger rights.**

2. The Department improperly invoked the exceptions to notice and comment for a rule involving discretionary policy choices.

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking and provide interested persons an opportunity to submit comments before adopting a legislative rule. An agency may dispense with those procedures in specified circumstances, including when it finds good cause that notice and comment are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B). Courts construe the good-cause exception narrowly.

DOT's own regulations reinforce the limited nature of this authority. Under 49 C.F.R. § 5.13(j)(2), substantive DOT rules issued without notice and comment must be the exception; interim final rules and direct final rules "are not favored." Section 5.13(l)(1) identifies appropriate direct final rules as those the Department determines to be noncontroversial and unlikely to generate adverse public comment. This regulation permits certain minor changes to statistical and reporting requirements, but it does not authorize the Department to use a reporting rule as a vehicle for resolving contested substantive questions without the required procedures.

Here, the Department's action is not limited to the ministerial act of removing ten causes from an existing reporting category. The Department must also consider how to structure the resulting classifications and explain their significance.

Congress did not prescribe how DOT should otherwise classify these events. DOT therefore had to exercise judgment in implementing the statute, including whether to incorporate the causes into existing categories where appropriate, create new categories, or establish a separate catch-all category. Its choice among these alternatives was discretionary and should have been supported by reasoned decision-making and public participation.

First, the Department chose to create a separate reporting category for Section 511(b) causes rather than consider incorporating these causes into existing categories where appropriate and consistent with Section 511(b). That choice affects the continuity, comparability, and usefulness of airline reporting data. It also raises questions about whether the resulting classifications will enable the Department, passengers, policymakers, journalists, and researchers to distinguish between events involving materially different degrees of airline responsibility.

Second, the rule risks allowing a reporting exclusion to be understood as a determination that an event was outside the airline's control. DOT should not permit its regulatory terminology or explanatory statements to imply a substantive conclusion that Congress did not expressly prescribe.

Third, and most importantly, the Department's own economic analysis acknowledges potentially significant consequences for passengers. The Department predicts that "the total value of amenities and compensation currently provided by air carriers to consumers will be reduced under this final rule because of the 10 delineated causes of delay and cancellation that will now be excluded from the Air Carrier category in 14 C.F.R. § 234.4." It further concludes that "the number of delays and cancellations for which air carriers provide amenities and compensation to consumers is expected to be reduced." Under the APA, a rule that DOT predicts will reduce consumer benefits deserves more than a procedural shortcut.

The Department cannot resolve this concern merely by characterizing the rule as a nondiscretionary implementation of Congress's directive. The reporting exclusions may be mandatory, but the Department must still ensure that its regulatory language does not exceed the statute, that its explanations accurately describe the legal effect, if any, of the exclusions, and that any discretionary policy choices are supported by appropriate legal authority and procedure.

Conclusion and requested relief

For these reasons, FlyersRights and the undersigned respectfully request that the Department:

1. **Withdraw the direct final rule** and reconsider its discretionary implementation choices pursuant to appropriate procedures.

2. **Clarify the legal effect of Section 511(b)** by expressly stating that exclusion of a cause from the specified BTS reporting category does not determine whether an airline is at fault, whether an event is outside the airline's control for the purpose of another applicable law, or whether an airline has satisfied its statutory, regulatory, or contractual obligations to passengers.
3. **Use notice and comment rulemaking for any further discretionary implementation choices**, including the design and explanation of reporting categories and any proposed interpretation that could affect how airlines, passengers, or the public understand the legal significance of those categories.
4. **Consider alternatives that preserve the usefulness and comparability of the data**, including incorporating the ten specified causes into existing categories where appropriate and consistent with Section 511(b), rather than adopting an unnecessarily broad catch-all category.

FlyersRights and the undersigned organizations appreciate the Department's attention to these concerns and request a response by October 26, 2026.

Respectfully submitted,



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